U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33969006

Date: OCT. 4, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an executive in the vaccine industry, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned degrees in law and business administration in Belgium in the 1980s and early 1990s. After working as a lawyer for various companies in Belgium and the United Kingdom, in 1997 the Petitioner began working for [redacted] mostly in Belgium, focusing on vaccine business development. A [redacted] report from 2023 states the Petitioner's title as Senior Vice President and General Counsel, Vaccine Business Development and Global Health. In late 2023, the Petitioner became the chief business officer of [redacted], a new company based outside Washington, D.C. He is currently in the United States as an O-1 nonimmigrant with extraordinary ability.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied three of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met one of the criteria, pertaining to a leading or critical role. On appeal, the Petitioner asserts that he also meets the other four claimed criteria, or that he has submitted comparable evidence relating to those criteria.

Upon review of the record, we agree with the Director that the Petitioner has established a leading or critical role for organizations or establishments with a distinguished reputation, satisfying the requirements of 8 C.F.R. § 204.5(h)(3)(viii). We also conclude that the Petitioner has established, by a preponderance of the evidence, that he satisfies a second criterion at 8 C.F.R. § 204.5(h)(3)(ix), pertaining to a high salary or other significantly high remuneration. We will discuss the other claimed criteria below.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner attended annual meetings between senior leaders of [redacted] and the National Institute of Allergy and Infectious Diseases (NIAID) at the National Institutes of Health (NIH), chaired by then-NIAID Director Dr. Anthony Fauci, beginning in 2016. The Petitioner asserted that his participation in the senior leaders meeting is, in effect, membership in a qualifying association in the field, or comparable to such a membership under 8 C.F.R. § 204.5(h)(4).

The Petitioner has not established that an annual meeting is an association in the field, and although he states that he was invited to participate "due to his world-renowned expertise in vaccine business strategy," the record, including a letter from Dr. Fauci, indicates that participation is determined by rank within the participating organizations.

The Director determined that the Petitioner's participation in the meetings was not membership in an association. The Petitioner argues on appeal that "the plain language elements of the criterion do not readily apply to his occupation" because "vaccine business strategy and development [is] a unique field for which typical membership associations are not available." This argument assumes that a qualifying association must narrowly focus on a particular specialty. An association with a wider scope, for example encompassing the pharmaceutical industry or business in general, could qualify as long as its membership requirements conformed to the regulatory requirements.[1] The Petitioner has not established that such associations do not exist, or that they would exclude individuals employed in "vaccine business strategy and development."

We agree with the Director that the Petitioner has not met his burden of proof with regard to memberships.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

To satisfy the requirements of this criterion, the published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work. The person and the person's work need not be the *only* subject of the material, but the material should include a substantial discussion of the person's work in the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

The Petitioner submitted press releases and articles indicating that the Petitioner was present at news conferences announcing the establishment of manufacturing facilities in Texas and Saudi Arabia. These articles include brief quotations from the Petitioner but do not detail his roles in the project or otherwise substantially discuss the Petitioner and his work in the field. Another article, about a legal dispute between the European Union and vaccine manufacturer AstraZeneca, includes quotations from the Petitioner intended to provide perspective, but the article does not contain substantial discussion of the Petitioner and his work.

[1] We note that the record shows that several individuals named in the record are members of the National Academy of Sciences, which is a qualifying association under the regulation despite encompassing a wide range of scientific fields. Membership in a business association with similar membership requirements could qualify under the regulation without having to narrowly tailor membership to individuals employed in "vaccine business strategy and development."

The Petitioner asserted that "many articles and press releases are written about the results of [his] contributions, but . . . do not specifically name [him]" because "much of [his] work . . . is typically behind-the-scenes." Therefore, the Petitioner contended that published materials about business deals that he orchestrated should serve as comparable evidence.

In denying the petition, the Director acknowledged the Petitioner's request that the articles be considered as comparable evidence. The Director stated: "the material cannot be treated as comparable evidence because the articles are clearly not about the petitioner and his work." The Director also concluded that the submitted materials did not meet all the regulatory requirements, such as author credits and evidence that the articles appeared in qualifying publications. The Petitioner submitted some circulation data from a third-party website, but this information does not show that the trade or other media qualify as "major" as the regulation requires.

On appeal, the Petitioner contends that the Director improperly required "comparable evidence" to meet the same regulatory requirements. We acknowledge that comparable evidence, by its nature, would not precisely conform to all the regulatory requirements. Nevertheless, the Petitioner must establish that the criterion does not readily apply to his occupation. The assertion that he works "behind-the-scenes" does not appear to suffice in this regard. Even if his work attracts little attention from mainstream media for public consumption, the regulation also contemplates professional and trade publications, which are tailored to narrower, more specialized readerships.

The Petitioner observes that, under the *USCIS Policy Manual*, we "may consider material that focuses solely or primarily on work or research being undertaken by a team of which the person is a member, provided that the material mentions the person in connection with the work or other evidence in the record documents the person's significant role in the work or research." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Here, much of the published material focuses on the establishment of research centers, but the focus of those articles is not on the underlying business negotiations.

Some of the published materials support the conclusion that the Petitioner has performed in leading or critical roles, as covered by a separate criterion. Articles naming the Petitioner as a participant in high-profile news conferences can have some weight in a final merits determination. But the Petitioner has not met his burden of proof to show that he has been the subject of published material in qualifying media to meet this specific criterion, nor has he shown that the criterion does not readily apply to his occupation.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner asserted that he "led vaccine development and pandemic preparedness efforts over the course of two modern pandemics – the 2010 H1N1 Flu pandemic and the 2020 COVID-19 pandemic." The Petitioner stated that his "business accomplishments include serving as the lead and driving force behind numerous high-profile transactions" involving [redacted] The Petitioner submitted documentation concerning several of these transactions, such as vaccine licensing agreements and the establishment of a [redacted] sponsored by the U.S. Department of Health and Human Services, on the campus of [redacted]

The Petitioner submitted letters from some very prominent figures, such as Dr. Fauci, mentioned above, and Rick Perry, governor of Texas from 2000 to 2015. These individuals and others described the Petitioner's role in coordinating efforts that, in Dr. Fauci's words, "served to facilitate the collaborative mission between the greater NIH and [redacted] For example, Dr. Fauci stated that the Petitioner "personally negotiated and/or oversaw several critical licensing agreements between the NIH and the [redacted]

The Director concluded that the Petitioner had shown that he had made original contributions, but had not established their major significance in the field. The Director repeatedly referred to "scientific contributions."

But it bears emphasis that the Petitioner does not claim to be a scientist or a researcher. The Petitioner's training is in law and business administration, and his work has involved business negotiations rather than scientific research. The nature of the Petitioner's business contributions, and of the evidence regarding those contributions and their significance, will likely differ from the types of evidence we would expect regarding scientific contributions. By viewing the Petitioner's contributions through the lens of "scientific contributions," the Director appears to have imposed standards that do not apply to the *business* contributions documented in the record.

As the Director appears to have viewed this evidence under the wrong field, we will remand this matter for further consideration. The Director must view the Petitioner's business contributions in the proper context, and request additional evidence if the Director deems it necessary.

III. CONCLUSION

While we affirm some of the Director's specific determinations, what remains may be sufficient to meet three of the initial evidentiary criteria. We will therefore remand the matter to the Director for further consideration of the original contributions criterion.

If the Director determines that the Petitioner has met his burden of proof regarding that criterion, the Director shall then proceed to a final merits determination as described in *Kazarian*, 596 F.3d at 1119-20. We emphasize that the Petitioner claims extraordinary ability in business, not in the sciences. Therefore the Director should neither expect the types of evidence normally seen in the sciences, nor draw adverse conclusions from the Petitioner's inability to submit such evidence.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.